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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/085,528
Filing Date: February 25, 2002
Appellant(s): LAMBERT ET AL.

Andrew H. Leung
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/22/06 appealing from the Office
action mailed 3/21/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(a) Applicant's admission in page 9, lines 13-21 of the specification.

(b) Zarrillo, Andrew. "Autodesk Licenses Constraint Management Technology." Business Wire. New York. Feb. 26, 1990. Sec.1, p.1. (Hereinafter "Zarrillo").

(c) The Feb.3, 2001 version of the official corporate website of D-cubed, Ltd. http://web.archive.org/web/20010203144400/www.d-cubed.co.uk/prod_dcm_intro.htm. (Hereinafter "D-Cubed web page").

(d) Merriam Webster's Collegiate Dictionary, 10th Ed. (2001), pp.486-487, 850-851.

The following evidence was previously made of record but not relied upon:

(e) Hoffmann, Christoph M. "D-Cubed's Dimensional Constraint Manager". Journal of Computing and Information Science in Engineering. March 2001. Vol.1, Issue 1. pp.100-101. (Teaches the functionalities of D-Cubed's "2D Dimensional Constraint Solver")

(f) Anonymous, "The Constraint Management Company". Computer-Aided Engineering. Aug. 1996. Vol.15, Issue 8, p.26. [The entire article is directed to D-Cubed's Dimensional Constraint Solver (DCM) product.]

(g) Mills, Robert. "The Advanced State of Solid Modeling." Computer-Aided Engineering. Sept. 1998. Vol.17, Issue 9, pp.56-66. (Page 64, col.2 to p.65, col.1 discuss D-Cubed's "3D DCM" product.)

(h) Anonymous, "Cool CAE Sites". Computer-Aided Engineering. Aug. 1996. Vol.15, Issue 8, p.88. (The last item discussed in the "Cool CAE Sites" section is D-Cubed's DCM product.)

(i) Beckert, Beverly A. "SolidWorks 98". Computer-Aided Engineering. May 1998. Vol.17, Issue 5, p.28. (The first paragraph of col.2 of the "SolidWorks 98" article teaches the use of D-Cubed's DCM product.)

(j) Knoth, Janmarie, "Autofact '97: Making Manufacturing Accessible". Computer-Aided Engineering. Oct. 1997. Vol.16, Issue 10, pp.36-37, 40, 94, 104, 106, 108, 110, and 115. (Page 106, col.3, contains a section titled "Undertaking Development" which is directed to D-Cubed's 2D and 3D DCM products.)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(a) Claims 1-9, 11-13, and 15-39 are rejected under 35 U.S.C. 102(b) based on public use or impermissible sales more than one year before the effective filing date of the U.S. application.

(b) Claims 1-9, 11-13, and 15-39 are also rejected under 35 U.S.C. 102(a) as being anticipated by the D-Cubed web page.

1. Claims 1-39 rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. The 2D Dimensional Constraint Manager (DCM) available from D-cubed, Ltd. of Cambridge, England, reads upon the claimed invention.

- a) In the D-cubed web page, on the page titled "The 2D and 3D Dimensional Constraint Managers: Overview", the section titled "What is variational design?" teaches the following:

In brief, variational techniques enable the end-user to specify and control their geometric models through the use of simple rules. Such rules frequently include dimensions and constraints. Dimensions, such as distances, angles and radii, have an easily understood interpretation. The meaning of constraints is less obvious. In fact they are simply rules that restrict, *i.e. constrain*, the behavior of the geometries in the model. Examples of constraints include parallelism, tangency and concentricity.

To modify a model, the end-user simply specifies a change to the rules, such as a modified value for a dimension. The DCM then automatically re-calculates the locations of all the geometries affected by the new dimension value, whilst ensuring that their final locations are consistent with the previously applied dimensions and constraints. The end-user does not have to re-position the geometries manually to create the new configuration, hence their productivity is greatly enhanced.

- b) Examiner finds that the claimed "boundary" is one of the "constraints" taught in the section recited above.

2. Claims 1-39 are rejected under 35 U.S.C. 102(a) as being anticipated by the D-cubed web page.

3. In regards to Claim 1, The D-cubed web page teaches the following limitations:

1. (Currently amended) A method comprising:
receiving an input for the pattern comprising a plurality of features included within a boundary of a CAD geometry piece where a feature corresponds to a feature of the CAD geometry piece;

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection)

receiving an indication of modification to the CAD geometry piece;

Art Unit: 2123

automatically modifying the CAD geometry piece and its boundary based at least upon the received indication; and

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection)

automatically modifying at least one of the pattern or the plurality of features to be continuously included within the boundary of the modified CAD geometry piece, based at least upon the modified CAD geometry piece and the received input.

4. In regards to Claim 2, The D-cubed web page teaches the following limitations:

2. (Original) The method of claim 1, wherein said receiving the input comprises receiving an input corresponding to an indication of a direction, the indication having an X-component and a Y-component.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection. Examiner finds that X and Y coordinates are inherently stored in 2-Dimensional CAD drawings)

5. In regards to Claim 3, The D-cubed web page teaches the following limitations:

3. (Currently amended) The method of claim 1, wherein: said receiving the input includes receiving a boundary value, the boundary value having at least one of a maximum value and a minimum value defining a maximum and a minimum, respectively, for a distance between at least one feature and the boundary; and

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection. Examiner finds that minimum and maximum values correspond to the taught "constraints")

automatically modifying at least one of the pattern or the plurality of features includes maintaining a distance between the at least one feature and the boundary within the boundary value.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

Art Unit: 2123

6. In regards to Claim 4, The D-cubed web page teaches the following limitations:

4. (Original) The method of claim 1, wherein said receiving the indication of modification comprises receiving an indication of modification to a 2-D geometry piece parametrically defining the CAD geometry piece

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

7. In regards to Claim 5, The D-cubed web page teaches the following limitations:

5. (Original) The method of claim 4, wherein said receiving the modification to the geometry comprises receiving an indication of modification of a dimension of the 2-D geometry piece parametrically defining said CAD geometry piece.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

8. In regards to Claim 6, The D-cubed web page teaches the following limitations:

6. (Original) The method of claim 1, wherein said receiving the input comprises receiving an indication to optimize the pattern.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

9. In regards to Claim 7, The D-cubed web page teaches the following limitations:

7. (Original) .The method of claim 1, wherein said automatically modifying the CAD geometry piece comprises parametrically updating the CAD geometry piece.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

10. In regards to Claim 8, The D-cubed web page teaches the following limitations:

Art Unit: 2123

8. (Currently amended) The method of claim 1, wherein said automatically modifying at least one of the pattern or the plurality of features comprises automatically determining what modification, if any, is necessary to one or more dimension of at least one of the plurality of features.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

11. In regards to Claim 9, The D-cubed web page teaches the following limitations:

9. (Currently amended) The method of claim 1, wherein said automatically modifying at least one of the pattern or the plurality of features comprises automatically determining what modification, if any, is necessary to an inter-feature distance between each of the plurality of features, and changing the inter-feature distance between at least one feature and an adjacent feature upon determining the modification is necessary.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

12. In regards to Claim 10, The D-cubed web page teaches the following limitations:

10. (Canceled)

13. In regards to Claim 11, The D-cubed web page teaches the following limitations:

11. (Currently amended) The method of claim 1, wherein said automatically modifying at least one of the pattern or the plurality of features comprises:

automatically determining what modification, if any, is necessary to a first dimension in view of a determined modification to a second dimension, to maintain a relationship between said first and second dimensions, where the first dimension and the second dimension comprise first and second dimensions of each feature of the plurality of features, and

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

modifying at least one of the first dimension or the second dimension of each feature of the plurality of features.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

14. In regards to Claim 34, The D-cubed web page teaches the following limitations:

34. (New) The method of claim 1, wherein said automatically modifying at least one of the pattern or the plurality of features includes removing one or mote features from the pattern.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

15. In regards to Claim 35, The D-cubed web page teaches the following limitations:

35. (New) The method of claim 1, wherein said automatically modifying at least one of the pattern or the plurality of features includes adjusting a distance between at least one feature and the boundary such that the plurality of features are continuously included within the boundary.

(See the section of the D-cubed web page that is recited verbatim in the 102(b) on-sale bar rejection.)

16. **Claims in claim set 2 (claims 12-13, 15-22, and 36-37) and claim set 3 (claims 23-33 and 38-39) are rejected based on the same reasoning as the claims in claim set 1 (claims 1-9, 11, and 34-35). Claim set 2 consists of apparatus claims, and claim set 3 consists of article of manufacture claims that recite limitations equivalent to those recited in the method claims of claim set 1, and which are taught throughout the D-cubed web page.**

(10) Response to Argument

PART I: THE 35 U.S.C. 102(b) PUBLIC USE and ON-SALE BAR REJECTIONS

A. Examiner Provided a *Prima Facie* Case of Public Use and Sales

The Examiner provided the Appellant with a *prima facie* case of unpatentability based on the 35 U.S.C. 102(b) public use and on-sale bars. The *prima facie* case is described in detail in the following paragraphs.

First, Appellant admitted in page 9, lines 13-21 of the instant specification that the claimed invention “may include parametric software components to provide parametric functionality, such as, but not limited to, 2D Dimensional Constraint Manager available from D-cubed, Ltd. of Cambridge, England” (reference [a] in section 8 of this Appeal Brief).

Second, the Examiner rejected the instant application based on the teachings of the archived Feb. 3, 2001 version of the D-Cubed web page (reference [c] in section 8 of this Appeal Brief). The anticipation rejections will be described in further detail in the section pertaining to the prior art rejections.

Third, the Examiner identified the Zarrillo news article, titled “Autodesk Licenses Constraint Management Technology” (reference [b] in section 8 of this Appeal Brief). Examiner made note of this article in the “Oath/Declaration” section of the final office action. The abstract of the Zarrillo article teaches that Autodesk reached an agreement with D-Cubed Ltd. of Cambridge, England, to license D-Cubed's constraint management software for integration into Autodesk's family of computer-aided engineering products.

The abstract of the Zarrillo article also teaches that D-Cubed's dimensional constraint manager allows designers to "apply a variety of constraints to define a model. Then, when any element of that design is altered, DCM automatically solves the equations necessary to determine what happens to the model." As the Examiner pointed out in the Final Office Action, the date of the Zarrillo article is Feb.26, 1990, a full 12 years before the effective filing date of the instant application of Feb.25, 2002. The Appellant has remained silent regarding these findings.

Fourth, the Examiner made of record but did not rely upon several additional magazine articles pertaining to D-Cubed's DCM product (references [e]-[j] in section 8 of this Appeal Brief). While not relied upon for the rejection, all of these articles predate the effective date of the instant application by more than one year. All of these articles also describe D-Cubed's DCM product as being for sale and in use by the general public.

The totality of this evidence (in particular the news of the licensing agreement) strongly indicates that Autodesk integrated D-Cubed's DCM into Autodesk's "family of computer-aided engineering products" at some point in the past 12 years, in particular more than one year before the effective filing date of the instant application. This is *prima facie* evidence of breach of the on-sale bar [see MPEP § 2133.03(b)]. It is also *prima facie* evidence of public use, given the long period of commercial exploitation of the product [see MPEP § 2133.03(a)(I)].

In the final office action, the Examiner reminded the Appellant of his duty to disclose to the Office all information known to be material to patentability as defined in 37 CFR 1.56. The Appellant has remained silent on the Zarillo article. The Appellant has also remained silent on the magazine articles pertaining to D-Cubed's DCM product that were included in the record but did not rely upon.

B. Appellant's Rebuttal Consists of Attorney Argument Rather Than Evidence

Once the Examiner has made a *prima facie* case, the Applicant/Appellant bears the burden of rebutting it. MPEP § 2107 (describing the shifting of the burden in the context of lack-of-utility rejections). In the instant application, the Appellant has responded with arguments that the teachings in the D-Cubed web page do not anticipate the claimed invention.

This response is inadequate because attorney arguments cannot take the place of evidence. MPEP §§ 716.01(c)(II) and 2145 (describing the evidentiary standard in the context of obviousness rejections). The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965).

The Examiner asserts that Appellant's response consisting of attorney argument is not sufficient. The Appellant has commercially licensed the D-cubed DCM product for 12 years, and has integrated it for use in the Appellant's products. The Appellant is therefore intimately aware of the features of the D-

cubed DCM product. Yet, the Appellant's response to Examiner's public use and on-sale bar rejections is limited to the assertion that the DCM product "as described in the D-Cubed web page does not read upon the claims" (see p.4 of the Appeal Brief filed 9/22/06. Emphasis added). Appellant's response is silent as to whether the D-cubed DCM product, as incorporated into Appellant's products, read upon the claims. In other words, the Appellant leaves open the possibility that the D-cubed DCM product does read on the claimed invention, even if the description of the product does not.

Therefore, what is lacking is an appropriate affidavit or declaration that states that to the best of Appellant's knowledge, the D-cubed DCM product, as incorporated into Appellant's own products, does not constitute a public use or on-sales bar of the claimed invention. (Ideally, the Appellant would also provide user manuals of the D-cubed DCM product, and point out how the claimed invention differs from the D-cubed DCM product.)

C. Appellant's Argument is Not Persuasive

Assuming, arguendo, that Applicant's response is adequate, it still fails because the argument is not persuasive. The Appellant argues that the DCM product "as described in the D-Cubed web page does not read upon the claims" (see p.4 of the Appeal Brief filed 9/22/06. Emphasis added). Examiner respectfully disagrees, for the reasons detailed below.

PART II: THE 35 U.S.C. 102(a) PRIOR ART REJECTIONS – CLAIM 1

A. Appellant's Mischaracterizes the Reference's Teachings By Selectively
Quoting Sentence Fragments.

Appellant's first argument regarding the prior art is based on a mischaracterization of the prior art. More specifically, the Appellant argues that the D-Cubed web page does not teach the claimed "receiving an indication of modification to the CAD geometry piece." According to the Appellant (see p.4 of the Appeal Brief):

The only input described in the two paragraphs provides: "To modify a model, the end-user simply specifies a change to the rules." Then, in response to the user input, the DCM 'automatically re-calculates the locations of all the geometries.'"

Appellant has not quoted the reference in its entirety. The full quote is: "To modify a model, the end-user simply specifies a change to the rules, such as a modified value for a dimension." (Emphasis added).

This element, omitted by the Appellant, is crucial to understanding the cited reference. The reference expressly teaches that "rules frequently include dimensions and constraints" (emphasis added). "Dimensions, such as distances, angles and radii, have an easily understood interpretation." The reference also teaches that "[t]he meaning of constraints is less obvious." They are "simply the rules that restrict, *i.e. constrain*, the behavior of the geometries in the model. Examples of constraints include parallelism, tangency and concentricity."

The reference then proceeds to teach that "[t]he DCM then automatically re-calculates the locations of all the geometries affected by the new dimension

value, whilst ensuring that their final locations are consistent with the previously applied dimensions and constraints” (see paragraph 10 of the Final Office Action. Emphasis added)

The reference teaches that the benefits of this feature is that “[t]he end-user does not have to re-position the geometries manually to create the new configuration, hence their [sic] productivity is greatly enhanced.”

Therefore, the Appellant incorrectly argues that “the only input described in the two paragraphs [of the reference] changes a rule associated with a model, rather than directly modifying a piece” (emphasis in the original). In fact, changing a constraint would correspond to Appellant’s definition of changing a “rule”. Modifying a value of a dimension, as expressly taught by the reference (but omitted in the Appellant’s selective quotation of the reference) corresponds to the claimed “receiving an indication of modification to the CAD geometry piece.”

B. The Prior Art’s “Geometries” Anticipate Appellant’s “Patterns”.

Claim 1 recites, in part, “receiving an input for a pattern, the pattern comprising a plurality of features included within a boundary of a CAD geometry piece where a feature corresponds to a feature of the CAD geometry piece.”

The Appellant submits that the cited two paragraphs of the D-Cubed web page do not teach a pattern, rather, they “merely discuss ‘geometric models’ with ‘geometries’”. The Appellant defines a “pattern” as a “repeated” or repetitive

design. (See p.5 of the Appeal Brief). To support this argument, Appellants cite the Encarta World Dictionary, and the Oxford English dictionary.

Yet, this interpretation was not in the specification, nor in the original claims. Moreover, there are broader interpretations of the term "pattern."

According to page 850 of Merriam-Webster's Collegiate Dictionary (reference [d] in section 8 of this Appeal Brief), two broadly definition of "pattern" are "a form or model proposed for imitation", or "an artistic, musical, literary, or mechanical design or form."

"During patent examination, the claims are given the broadest reasonable interpretation consistent with the specification." MPEP § 904.01 (citing In re Morris, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997)). Examiner's interpretation, rather than Appellant's, is the broadest reasonable one.

In addition, the term "geometry" has different meanings than those implicitly accorded to it by the Appellant. According to page 486 of Merriam-Webster's Collegiate Dictionary (reference [d] in section 8 of this Appeal Brief), "geometry" can be defined as "the study of properties of given elements that remain invariant under specified transformations". This definition is on-point to the teachings of the prior art.

PART II: THE 35 U.S.C. 102(a) PRIOR ART REJECTIONS –

CLAIMS 2-9, 11-13, and 15-39

A. Claims 2-9, 11, and 34-35

Claims 2-9, 11, and 34-35 are dependent from claim 1 and incorporate the limitations of claim 1. Appellants have not argued any limitations in these claims other than those they inherit from claim 1. Therefore, the rejections of these claims should be maintained for the reasons set forth above.

B. Claim 12

Claims 12 is an independent apparatus claim that recites limitations equivalent to those recited in independent method claim 1. All of Appellant's arguments regarding the rejection of this claim are identical to arguments presented regarding claim 1. Therefore, the rejections of this claim should be maintained for the reasons set forth above.

C. Claims 13, 15-22, 36-37

Claims 13, 15-22, 36-37 are dependent from claim 12 and incorporate the limitations of claim 12. Appellants have not argued any limitations in these claims other than those they inherit from claim 12. Therefore, the rejections of these claims should be maintained for the reasons set forth above.

D. Claim 23

Claims 23 is an independent article-of-manufacture claim that recites limitations equivalent to those recited in independent method claim 1. All of Appellant's arguments regarding the rejection of this claim are identical to arguments presented regarding claim 1. Therefore, the rejections of this claim should be maintained for the reasons set forth above.

E. Claims 24-33, 38-39

Claims 24-33, 38-39 are dependent from claim 23 and incorporate the limitations of claim 23. Appellants have not argued any limitations in these claims other than those they inherit from claim 23. Therefore, the rejections of these claims should be maintained for the reasons set forth above.

F. Claims 8, 11, 19, 21, 22, 30, 32, and 33.

Claim 8 recites in part, "automatically determining what modification, if any, is necessary to one or more dimensions of at least one of the plurality of features." Appellants argue that the cited paragraphs of the D-cubed web page do not disclose "modifying one or more dimensions of features or automatically determining what modifications are necessary to one or more dimensions." Appellants argue that the cited prior art only teaches " automatically recalculating locations."

Examiner respectfully disagrees. The teaching of the cited prior art, in context, is as follows (emphasis added):

Art Unit: 2123

To modify a model, the end-user simply specifies a change to the rules, such as a modified value for a dimension. The DCM then automatically recalculates the locations of all the geometries affected by the new dimension value, whilst ensuring that their final locations are consistent with the previously applied dimensions and constraints.

Examiner notes that anticipation “is not an *ipsissimis verbis* test, i.e., identity of terminology is not required.” MPEP § 2123 (citing In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)). Examiner interprets that calculating “the locations of all the geometries affected by the new dimension value” corresponds to “modifying one or more dimensions of features.”

G. Claims 34, 36, 38.

Claim 34 recites in part, “automatically modifying at least one of the pattern or the plurality of features including removing one or more features from the pattern.” Appellants argue that the cited paragraphs of the D-cubed web page do not disclose “removing one or more features from the pattern.” Appellants argue that the cited prior art only teaches “automatically recalculating locations.”

Examiner respectfully disagrees. The teaching of the cited prior art, in context, is as follows (emphasis added):

To modify a model, the end-user simply specifies a change to the rules, such as a modified value for a dimension. The DCM then automatically recalculates the locations of all the geometries affected by the new dimension value, whilst ensuring that their final locations are consistent with the previously applied dimensions and constraints.

Examiner notes that the DCM “ensur[es] that [the geometries’] final locations are consistent with the previously applied dimensions and constraints.” Examiner

also notes that some final locations will be inconsistent with the previously applied dimensions and constraints, despite the best efforts of the DCM.

Given the definition of "constraint" provided in the cited prior art – "rules that restrict" - examiner interprets that it would be inherent to remove such inconsistent final locations. Otherwise, they would not be removed, and the DCM would have failed in its objective to "ensur[e] that [the geometries'] final locations are consistent with the previously applied dimensions and constraints." In other words, the DCM would not work as described.

H. Claims 35, 37, 39.

Claims 35, 37, and 39 recite in part, "adjusting a distance between at least one feature and the boundary such that the plurality of features are continuously included within the boundary." Appellants argue that the cited paragraphs of the D-cubed web page do not disclose that "continuous inclusion within a boundary is a kind of rule."

Examiner respectfully disagrees. The teaching of the cited prior art, in context, is as follows (emphasis added):

To modify a model, the end-user simply specifies a change to the rules, such as a modified value for a dimension. The DCM then automatically recalculates the locations of all the geometries affected by the new dimension value, whilst ensuring that their final locations are consistent with the previously applied dimensions and constraints.

Art Unit: 2123

Given the definition of "constraint" provided in the cited prior art – "rules that restrict" - examiner interprets that the cited prior art anticipates the claimed limitation.

(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ayal I. Sharon

Examiner, AU 2123


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